IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5105 OF 2004

Mrs.Seema Dattatraya Ayare & Ors. : Petitioners
(Orig. Plaintiffs)

V/s.

The Municipal Corporation of Greater
Mumbai & Ors. : Respondents
(No.1 Org. deft., Nos.2
& 3 Org. Applicants)

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Mr.Bipin Joshi for the petitioners.

Mr.Nihar Ghag with Mr.A.S.Naik for the respondent nos.2 & 3.

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CORAM : S.A. BOBDE, J.

July 20, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Ghag, learned counsel, appears and waives service of rule on behalf of the respondent nos.2 & 3.

Heard by consent.

2. This petition is filed by the original plaintiffs who are aggrieved by the order of the City Civil Court,

Mumbai, dated 17.4.2004. By the impugned order, the learned City Civil Court has directed the applicants i.e. the respondent nos.2 and 3 herein to be impleaded as parties to the suit.

3. The petitioners-plaintiffs have filed the suit in respect of several notices issued to them under section 351 of the Bombay Municipal Corporation Act in which the Corporation has alleged that the plaintiffs have carried out unauthorised construction in front of the building "Uday" which is in the compound of the said building. There is no dispute that the notices have been issued by the Bombay Municipal Corporation on the complaint made by the respondent nos.2 and 3 who have been impleaded. That is, however, not enough for impleading the said respondents. The main reason why the respondents nos.2 and 3 have been impleaded is that they have become owners of two flats purchased in the said building in which they were originally inducted as tenants. According to the respondents, they therefore made a complaint regarding the alleged unauthorised construction being made by the petitioners in the compound of the building in which they own the flats which has affected the ingress and egress to their shops.

4. In my view, this sufficiently protects the legal interest in the subject-matter of the suit for impleadment of the respondent nos.2 and 3 in the said suit in accordance with the observations of the Supreme Court in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors. [(1992) 2 S.C.C. 524]. In this decision, the Supreme Court has, inter alia, observed that there must be a direct or legal interest as distinguished from a commercial interest. Undoubtedly, whether the applicants proposed to be impleaded have legal interest in the matter depends upon the facts of each case. In the present case, the trial Court has prima facie found that the application for impleadment has been made by persons who own place in the property over which the alleged unauthorised construction is said to have taken place and that the construction affected their ingress and egress.

5. In this view of the matter, I see no merit in the petition. The amendment to be carried out within three weeks from today. The petitioners will be entitled to apply for appropriate consequential amendment as may be advised.

6. The rule stands discharged.

S.A. BOBDE, J.